

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-1470-AIR-E TCEQ ID: RN102663085 CASE NO.: 34567
RESPONDENT NAME: Viridis Energy (Texas), LP

Page 1 of 2

| | | |
|--|--|---|
| ORDER TYPE: | | |
| <input checked="" type="checkbox"/> 1660 AGREED ORDER | <input type="checkbox"/> FINDINGS AGREED ORDER | <input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING |
| <input type="checkbox"/> FINDINGS DEFAULT ORDER | <input type="checkbox"/> SHUTDOWN ORDER | <input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER |
| <input type="checkbox"/> AMENDED ORDER | <input type="checkbox"/> EMERGENCY ORDER | |
| CASE TYPE: | | |
| <input checked="" type="checkbox"/> AIR | <input type="checkbox"/> MULTI-MEDIA (check all that apply) | <input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE |
| <input type="checkbox"/> PUBLIC WATER SUPPLY | <input type="checkbox"/> PETROLEUM STORAGE TANKS | <input type="checkbox"/> OCCUPATIONAL CERTIFICATION |
| <input type="checkbox"/> WATER QUALITY | <input type="checkbox"/> SEWAGE SLUDGE | <input type="checkbox"/> UNDERGROUND INJECTION CONTROL |
| <input type="checkbox"/> MUNICIPAL SOLID WASTE | <input type="checkbox"/> RADIOACTIVE WASTE | <input type="checkbox"/> DRY CLEANER REGISTRATION |
| <p>SITE WHERE VIOLATION(S) OCCURRED: Viridis Energy Baytown LFGTE Facility, 4791 Tri City Beach Road, Baytown, Chambers County</p> <p>TYPE OF OPERATION: Landfill</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on March 3, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Roshondra Lowe, Enforcement Division, Enforcement Team 5, MC R-12, (713) 767-3553; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Luong Nguyen, Vice President, Viridis Energy (Texas), LP, 7500 San Felipe, Suite 600, Houston, Texas 77063 Respondent's Attorney: Not represented by counsel on this enforcement matter</p> | | |

VIOLATION SUMMARY CHART:

| VIOLATION INFORMATION | PENALTY CONSIDERATIONS | CORRECTIVE ACTIONS TAKEN/REQUIRED |
|---|---|--|
| <p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: July 20, 2007</p> <p>Date of NOE Relating to this Case: August 21, 2007 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>AIR</p> <p>1) Failure to install totalizing fuel flow meters with an accuracy of $\pm 5\%$ on seven internal combustion engines to individually and continuously measure the gas and liquid fuel usage in order to demonstrate continuous compliance with control requirements for nitrogen oxide ("NOx") in the Houston-Galveston-Brazoria nonattainment area [30 TEX. ADMIN. CODE §§ 117.340(a), 117.9020(2)(A)(i) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>2) Failure to report deviations regarding fuel flow meters on internal combustion engines, which should have been included in the deviation report for the period ending September 9, 2005 [30 TEX. ADMIN. CODE § 122.145(2)(A), TEX. HEALTH & SAFETY CODE § 382.085(b) and Air Permit No. 02574, General Conditions].</p> | <p>Total Assessed: \$7,455</p> <p>Total Deferred: \$1,491 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$5,964</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> | <p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a) Report deviations regarding fuel flow meters on internal combustion engines on the next deviation report;</p> <p>b) Within 270 days after the effective date of this Agreed Order, achieve compliance with the continuous demonstration of compliance requirements for combustion control at major industrial, commercial, and institutional sources in the Houston-Galveston-Brazoria nonattainment area; and</p> <p>c) Within 285 days after the effective date of this Agreed Order, submit written certification demonstrating compliance with Ordering Provisions a. and b. The certification shall include detailed supporting documentation including receipts, monitoring records, and/or other records to demonstrate compliance, and be notarized by a State of Texas Notary Public.</p> |

Additional ID No(s): CI0202T



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 26, 2007

TCEQ
DATES

| | | | | | |
|----------|-------------|-----------|------------|---------|-------------|
| Assigned | 28-Aug-2007 | Screening | 5-Sep-2007 | EPA Due | 15-Apr-2008 |
| PCW | 13-Dec-2007 | | | | |

RESPONDENT/FACILITY INFORMATION

| | | | |
|----------------------|----------------------------|--------------------|-------|
| Respondent | Viridis Energy (Texas), LP | | |
| Reg. Ent. Ref. No. | RN102663085 | | |
| Facility/Site Region | 12-Houston | Major/Minor Source | Major |

CASE INFORMATION

| | | | |
|---------------------------------|-----------------|-------------------|--------------------|
| Enf./Case ID No. | 34567 | No. of Violations | 2 |
| Docket No. | 2007-1470-AIR-E | Order Type | 1660 |
| Media Program(s) | Air | Enf. Coordinator | Roshondra Lowe |
| Multi-Media | | EC's Team | Enforcement Team 5 |
| Admin. Penalty \$ Limit Minimum | \$0 | Maximum | \$10,000 |

Penalty Calculation Section

| | | |
|---|-------------------|----------------|
| TOTAL BASE PENALTY (Sum of violation base penalties) | Subtotal 1 | \$7,100 |
|---|-------------------|----------------|

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

| | | | |
|---------------------------|----------------|--------------------------------|--------------|
| Compliance History | 5% Enhancement | Subtotals 2, 3, & 7 | \$355 |
|---------------------------|----------------|--------------------------------|--------------|

| | |
|-------|--|
| Notes | Penalty enhanced due to one NOV for same or similar violation. |
|-------|--|

| | | | | |
|--------------------|----|----------------|-------------------|------------|
| Culpability | No | 0% Enhancement | Subtotal 4 | \$0 |
|--------------------|----|----------------|-------------------|------------|

| | |
|-------|--|
| Notes | The Respondent does not meet the culpability criteria. |
|-------|--|

| | | | |
|------------------------------------|--------------|-------------------|------------|
| Good Faith Effort to Comply | 0% Reduction | Subtotal 5 | \$0 |
|------------------------------------|--------------|-------------------|------------|

| | | |
|---------------|------------|------------------------------|
| | Before NOV | NOV to EDRP/Settlement Offer |
| Extraordinary | | |
| Ordinary | | |
| N/A | X | (mark with x) |

| | |
|-------|---|
| Notes | The Respondent does not meet the good faith criteria. |
|-------|---|

| | | | |
|----------------------------|-----------------|-----------------------------------|------------|
| | 0% Enhancement* | Subtotal 6 | \$0 |
| Total EB Amounts | \$545 | *Capped at the Total EB \$ Amount | |
| Approx. Cost of Compliance | \$10,250 | | |

| | | |
|-----------------------------|-----------------------|----------------|
| SUM OF SUBTOTALS 1-7 | Final Subtotal | \$7,455 |
|-----------------------------|-----------------------|----------------|

| | | | |
|---|--|-------------------|------------|
| OTHER FACTORS AS JUSTICE MAY REQUIRE | | Adjustment | \$0 |
|---|--|-------------------|------------|

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

| | |
|-------|--|
| Notes | |
|-------|--|

| | |
|-----------------------------|----------------|
| Final Penalty Amount | \$7,455 |
|-----------------------------|----------------|

STATUTORY LIMIT ADJUSTMENT

| | |
|-------------------------------|----------------|
| Final Assessed Penalty | \$7,455 |
|-------------------------------|----------------|

DEFERRAL

20% Reduction

| | |
|-------------------|-----------------|
| Adjustment | -\$1,491 |
|-------------------|-----------------|

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

| | |
|-------|--|
| Notes | Deferral offered for expedited settlement. |
|-------|--|

| | |
|------------------------|----------------|
| PAYABLE PENALTY | \$5,964 |
|------------------------|----------------|

Screening Date 5-Sep-2007

Docket No. 2007-1470-AIR-E

PCW

Respondent Viridis Energy (Texas), LP

Policy Revision 2 (September 2002)

Case ID No. 34567

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN102663085

Media [Statute] Air

Enf. Coordinator Roshondra Lowe

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

| Component | Number of... | Enter Number Here | Adjust. |
|-------------------------------|--|-------------------|---------|
| NOVs | Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria) | 1 | 5% |
| | Other written NOVs | 0 | 0% |
| Orders | Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria) | 0 | 0% |
| | Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission | 0 | 0% |
| Judgments and Consent Decrees | Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria) | 0 | 0% |
| | Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government | 0 | 0% |
| Convictions | Any criminal convictions of this state or the federal government (number of counts) | 0 | 0% |
| Emissions | Chronic excessive emissions events (number of events) | 0 | 0% |
| Audits | Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted) | 0 | 0% |
| | Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed) | 0 | 0% |
| Please Enter Yes or No | | | |
| Other | Environmental management systems in place for one year or more | No | 0% |
| | Voluntary on-site compliance assessments conducted by the executive director under a special assistance program | No | 0% |
| | Participation in a voluntary pollution reduction program | No | 0% |
| | Early compliance with, or offer of a product that meets future state or federal government environmental requirements | No | 0% |

Adjustment Percentage (Subtotal 2) 5%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Penalty enhanced due to one NOV for same or similar violation.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

| | | | | | |
|--|--|--|--|------------|---------------------------------------|
| Screening Date 5-Sep-2007 | | Docket No. 2007-1470-AIR-E | | PCW | |
| Respondent Viridis Energy (Texas), LP | | <small>Policy Revision 2 (September 2002)</small> | | | |
| Case ID No. 34567 | | <small>PCW Revision June 26, 2007</small> | | | |
| Reg. Ent. Reference No. RN102663085 | | | | | |
| Media [Statute] Air | | | | | |
| Enf. Coordinator Roshondra Lowe | | | | | |
| Violation Number | | <input type="text" value="1"/> | | | |
| Rule Cite(s) | | 30 Tex. Admin. Code §§ 117.340(a), 117.9020(2)(A)(i) and Tex. Health & Safety Code § 382.085(b) | | | |
| Violation Description | | Failed to install totalizing fuel flow meters with an accuracy of $\pm 5\%$ on seven internal combustion engines to individually and continuously measure the gas and liquid fuel usage in order to demonstrate continuous compliance with control requirements for nitrogen oxide ("NOx") in the Houston-Galveston-Brazoria nonattainment area. | | | |
| Base Penalty | | | | | <input type="text" value="\$10,000"/> |

>> Environmental, Property and Human Health Matrix

| | | | | | |
|----|----------------|----------------------|----------------------|----------------------|---|
| OR | Harm | | | | |
| | Release | Major | Moderate | Minor | |
| | Actual | <input type="text"/> | <input type="text"/> | <input type="text"/> | |
| | Potential | <input type="text"/> | <input type="text"/> | x | Percent <input type="text" value="10%"/> |

>> Programmatic Matrix

| | | | | |
|----------------------|--|----------------------|--|--|
| Falsification | | | | |
| Major | Moderate | Minor | | |
| <input type="text"/> | <input type="text"/> | <input type="text"/> | | |
| | Percent <input type="text" value="0%"/> | | | |

Matrix Notes
 Human health or the environment could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of this violation.

Adjustment

Violation Events

| | | |
|---|----------------------------------|--------------------------|
| Number of Violation Events <input type="text" value="7"/> | <input type="text" value="888"/> | Number of violation days |
|---|----------------------------------|--------------------------|

| | | |
|--|--------------|----------------------|
| <small>mark only one with an x</small> | daily | <input type="text"/> |
| | monthly | <input type="text"/> |
| | quarterly | <input type="text"/> |
| | semiannual | <input type="text"/> |
| | annual | <input type="text"/> |
| | single event | x |

Seven single events are recommended (one per engine).

Violation Base Penalty

| | |
|---|---|
| Economic Benefit (EB) for this violation | Statutory Limit Test |
| Estimated EB Amount <input type="text" value="\$357"/> | Violation Final Penalty Total <input type="text" value="\$7,350"/> |
| This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$7,350"/> | |

Economic Benefit Worksheet

Respondent: Viridis Energy (Texas), LP

Case ID No. 34567

Reg. Ent. Reference No. RN102663085

Media Air

Violation No. 1

| Percent Interest | Years of Depreciation |
|------------------|-----------------------|
| 5.0 | 15 |

| Item Description | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|
| No commas or \$ | | | | | | | |

Delayed Costs

| | | | | | | | |
|--------------------------|---------|-------------|-------------|-----|------|-------|-------|
| Equipment | \$8,750 | 20-Jul-2007 | 18-Feb-2008 | 0.6 | \$17 | \$340 | \$357 |
| Buildings | | | | 0.0 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.0 | \$0 | \$0 | \$0 |
| Engineering/construction | | | | 0.0 | \$0 | \$0 | \$0 |
| Land | | | | 0.0 | \$0 | n/a | \$0 |
| Record Keeping System | | | | 0.0 | \$0 | n/a | \$0 |
| Training/Sampling | | | | 0.0 | \$0 | n/a | \$0 |
| Remediation/Disposal | | | | 0.0 | \$0 | n/a | \$0 |
| Permit Costs | | | | 0.0 | \$0 | n/a | \$0 |
| Other (as needed) | | | | 0.0 | \$0 | n/a | \$0 |

Notes for DELAYED costs

Estimated cost to ensure that individual fuel flow-meters are installed on all combustion engines. Date required is based on the investigation date. Final date is based on the projected compliance date.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

| | | | | | | | |
|-------------------------------|--|--|--|-----|-----|-----|-----|
| Disposal | | | | 0.0 | \$0 | \$0 | \$0 |
| Personnel | | | | 0.0 | \$0 | \$0 | \$0 |
| Inspection/Reporting/Sampling | | | | 0.0 | \$0 | \$0 | \$0 |
| Supplies/equipment | | | | 0.0 | \$0 | \$0 | \$0 |
| Financial Assurance [2] | | | | 0.0 | \$0 | \$0 | \$0 |
| ONE-TIME avoided costs [3] | | | | 0.0 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.0 | \$0 | \$0 | \$0 |

Notes for AVOIDED costs

Approx. Cost of Compliance

\$8,750

TOTAL

\$357

Screening Date 5-Sep-2007

Docket No. 2007-1470-AIR-E

PCW

Respondent Viridis Energy (Texas), LP

Policy Revision 2 (September 2002)

Case ID No. 34567

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN102663085

Media [Statute] Air

Enf. Coordinator Roshondra Lowe

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 122.145(2)(A), Tex. Health & Safety Code § 382.085(b) and Air Permit No. 02574, General Conditions

Violation Description Failed to report deviations regarding fuel flow meters on internal combustion engines, which should have been included in the deviation report for the period ending September 9, 2005.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

| Release | Harm | | |
|-----------|-------|----------|-------|
| | Major | Moderate | Minor |
| Actual | | | |
| Potential | | | |

Percent 0%

>> Programmatic Matrix

| Falsification | Major | Moderate | Minor |
|---------------|-------|----------|-------|
| | | | x |

Percent 1%

Matrix Notes

Less than 30 percent of the rule was not met.

Adjustment \$9,900

\$100

Violation Events

Number of Violation Events 1

163 Number of violation days

| | | |
|----------------------------|--------------|---|
| mark only one with an x | daily | |
| | monthly | |
| | quarterly | |
| | semiannual | |
| | annual | |
| | single event | x |

Violation Base Penalty \$100

One single event is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$188

Violation Final Penalty Total \$105

This violation Final Assessed Penalty (adjusted for limits) \$105

Economic Benefit Worksheet

Respondent Viridis Energy (Texas), LP
Case ID No. 34587
Reg. Ent. Reference No. RN102663085
Media Air
Violation No. 2

| Percent Interest | Years of Depreciation |
|------------------|-----------------------|
| 5.0 | 15 |

| Item Description | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|
| No commas or \$ | | | | | | | |

Delayed Costs

| | | | | | | | |
|--------------------------|---------|------------|------------|-----|-------|-----|-------|
| Equipment | | | | 0.0 | \$0 | \$0 | \$0 |
| Buildings | | | | 0.0 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.0 | \$0 | \$0 | \$0 |
| Engineering/construction | | | | 0.0 | \$0 | \$0 | \$0 |
| Land | | | | 0.0 | \$0 | n/a | \$0 |
| Record Keeping System | | | | 0.0 | \$0 | n/a | \$0 |
| Training/Sampling | | | | 0.0 | \$0 | n/a | \$0 |
| Remediation/Disposal | | | | 0.0 | \$0 | n/a | \$0 |
| Permit Costs | | | | 0.0 | \$0 | n/a | \$0 |
| Other (as needed) | \$1,500 | 9-Oct-2005 | 9-Apr-2008 | 2.5 | \$188 | n/a | \$188 |

Notes for DELAYED costs

Estimated cost to ensure that all instances of deviations are reported in a timely manner. Date required is based on the due date of the deviation report. Final date is based on the projected compliance date.

Avoided Costs**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

| | | | | | | | |
|-------------------------------|--|--|--|-----|-----|-----|-----|
| Disposal | | | | 0.0 | \$0 | \$0 | \$0 |
| Personnel | | | | 0.0 | \$0 | \$0 | \$0 |
| Inspection/Reporting/Sampling | | | | 0.0 | \$0 | \$0 | \$0 |
| Supplies/equipment | | | | 0.0 | \$0 | \$0 | \$0 |
| Financial Assurance [2] | | | | 0.0 | \$0 | \$0 | \$0 |
| ONE-TIME avoided costs [3] | | | | 0.0 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.0 | \$0 | \$0 | \$0 |

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,500

TOTAL

\$188

Compliance History

| | | | | |
|---|---|---------------------------------------|---|---|
| Customer/Respondent/Owner-Operator: | CN601281835 | Viridis Energy (Texas), LP | Classification: AVERAGE | Rating: 1.80 |
| Regulated Entity: | RN102663085 | VIRIDIS ENERGY BAYTOWN LFGTE FACILITY | Classification: AVERAGE | Site Rating: 4.50 |
| ID Number(s): | MUNICIPAL SOLID WASTE PROCESSING AIR NEW SOURCE PERMITS AIR NEW SOURCE PERMITS AIR NEW SOURCE PERMITS AIR NEW SOURCE PERMITS AIR NEW SOURCE PERMITS AIR OPERATING PERMITS | | | REGISTRATION ACCOUNT NUMBER PERMIT PERMIT EPA ID AFS NUM PERMIT 48011 CI0202T N058 70133 PSDTX1035 4807100098 2574 |
| Location: | 4791 TRI CITY BEACH RD, BAYTOWN, TX, 77520 | | Rating Date: 9/1/2007 Repeat Violator: NO | |
| TCEQ Region: | REGION 12 - HOUSTON | | | |
| Date Compliance History Prepared: | September 05, 2007 | | | |
| Agency Decision Requiring Compliance History: | Enforcement | | | |
| Compliance Period: | August 28, 2002 to August 28, 2007 | | | |
| TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History | | | | |
| Name: | <u>Roshondra Lowe</u> | | Phone: | <u>(713) 767-3553</u> |

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? Yes
3. If Yes, who is the current owner? Viridis Energy (Texas), LP
4. If Yes, who was/were the prior owner(s)? Reliant Baytown LFGTE Facility
5. When did the change(s) in ownership occur? 7/15/2005

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A

B. Any criminal convictions of the state of Texas and the federal government.
N/A

C. Chronic excessive emissions events.
N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

| | | |
|---|------------|----------|
| 1 | 08/21/2006 | (479924) |
| 2 | 04/03/2007 | (532647) |
| 3 | 08/21/2007 | (556808) |

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

| | | | |
|--------------|--|----------|--------------------------|
| Date: | 08/21/2006 | (479924) | |
| Self Report? | NO | | Classification: Moderate |
| Citation: | 30 TAC Chapter 122, SubChapter B 122.146(2) 5C THC Chapter 382, SubChapter D 382.085(b) | | |
| Rqmt Prov: | OP O-02574 | | |
| Description: | Failure to submit Permit Compliance Certification Report within 30 days after the end of the certification period. | | |
| Self Report? | NO | | Classification: Moderate |
| Citation: | 30 TAC Chapter 122, SubChapter B 122.145(2)(C) 5C THC Chapter 382, SubChapter D 382.085(b) | | |
| Rqmt Prov: | OP O-02574 | | |
| Description: | Failure to submit deviation reports within 30 days after the end of the reporting period. | | |
| Self Report? | NO | | Classification: Moderate |
| Citation: | 30 TAC Chapter 116, SubChapter B 116.115(c) 5C THC Chapter 382, SubChapter D 382.085(b) | | |
| Rqmt Prov: | PERMIT 70133 | | |

Description: Failure to calibrate portable analyzer before and after monitoring engine performance evaluations.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
VIRIDIS ENERGY (TEXAS), LP
RN102663085**

§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2007-1470-AIR-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Viridis Energy (Texas), LP ("Viridis") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and Viridis appear before the Commission and together stipulate that:

1. Viridis owns and operates a landfill that converts waste into electricity located at 4791 Tri City Beach Road in Baytown, Chambers County, Texas (the "Plant").
2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and Viridis agree that the Commission has jurisdiction to enter this Agreed Order, and that Viridis is subject to the Commission's jurisdiction.
4. Viridis received notice of the violations alleged in Section II ("Allegations") on or about August 26, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Viridis of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Seven Thousand Four Hundred Fifty-Five Dollars (\$7,455) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Viridis has paid Five Thousand Nine Hundred Sixty-Four Dollars (\$5,964) of the administrative penalty and One Thousand Four Hundred Ninety-One Dollars (\$1,491) is deferred

contingent upon Viridis' timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If Viridis fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Viridis to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Viridis have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Viridis has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Plant, Viridis is alleged to have:

1. Failed to install totalizing fuel flow meters with an accuracy of $\pm 5\%$ on seven internal combustion engines to individually and continuously measure the gas and liquid fuel usage in order to demonstrate continuous compliance with control requirements for nitrogen oxide ("NOx") in the Houston-Galveston-Brazoria nonattainment area, in violation of 30 TEX. ADMIN. CODE §§ 117.340(a) and 117.9020(2)(A)(i) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on July 20, 2007.
2. Failed to report deviations regarding fuel flow meters on internal combustion engines, which should have been included in the deviation report for the period ending September 9, 2005, in violation of 30 TEX. ADMIN. CODE § 122.145(2)(A), TEX. HEALTH & SAFETY CODE § 382.085(b) and Air Permit No. 02574, General Conditions, as documented during an investigation conducted on July 20, 2007.

III. DENIALS

Viridis generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Viridis pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Viridis' compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Viridis Energy (Texas), LP, Docket No. 2007-1470-AIR-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. It is further ordered that Viridis shall undertake the following technical requirements:
 - a. Report deviations regarding fuel flow meters on internal combustion engines on the next deviation report;
 - b. Within 270 days after the effective date of this Agreed Order, achieve compliance with the continuous demonstration of compliance requirements for combustion control at major industrial, commercial, and institutional sources in the Houston-Galveston-Brazoria nonattainment area, in accordance with 30 TEX. ADMIN. CODE § 117.340; and
 - c. Within 285 days after the effective date of this Agreed Order, submit written certification demonstrating compliance with Ordering Provision Nos. 2.a. and 2.b. The certification shall include detailed supporting documentation including receipts, monitoring records, and/or other records to demonstrate compliance, and be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:


Air Section, Manager
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Avenue, Suite H
Houston, Texas 77023-1486

3. The provisions of this Agreed Order shall apply to and be binding upon Viridis. Viridis is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
4. If Viridis fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Viridis' failure to comply is not a violation of this Agreed Order. Viridis shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Viridis shall notify the Executive Director within seven days after Viridis becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Viridis shall be made in writing to the Executive Director. Extensions are not effective until Viridis receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against Viridis in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Viridis, or three days after the date on which the Commission mails notice of the Order to Viridis, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

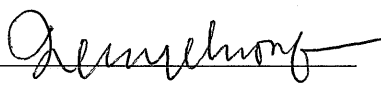
2/28/2008
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

14 December 2007
Date

LUONG NGUYEN

Name (Printed or typed)
Authorized Representative of
Viridis Energy (Texas), LP

VICE PRESIDENT

Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

